



The Comptroller General
of the United States

Washington, D.C. 20548

Riback

Decision

Matter of: Ruska Instrument Corporation

File: B-235247

Date: August 7, 1989

DIGEST

1. Protest that agency should have included transportation costs in its evaluation of offers is denied where protester's interpretation of apparently ambiguous solicitation terms is unreasonable and, in any event, protester has not demonstrated how it was prejudiced by agency's evaluation method.
2. Protest that firms were not evaluated on a common basis is denied where, although agency evaluated certain costs on the basis of protester's proposal to do work in 3 years and evaluated awardee on basis of his offer to do work in 2 years, protester would not have been low had agency evaluated protester's offer on same basis as awardee's offer.
3. Agency properly did not consider in its evaluation a number of alleged "benefits" resulting from protester's proposal of a longer delivery schedule where the solicitation did not provide for consideration of these alleged benefits in evaluating offers.

DECISION

Ruska Instrument Corporation protests the award of a fixed-price contract to Kollsman division of Sequa Corporation under request for proposals (RFP) No. F41608-87-R-1115 issued by the Department of the Air Force to acquire services to update pressure temperature test sets. Ruska argues that the Air Force erred in its evaluation of proposals, thereby failing to make award to the lowest priced technically acceptable offeror. We dismiss the protest in part and deny it in part.

The solicitation permitted firms to submit proposals on an alternate basis, allowing for the provision of services during a base year and either 1 or 2 option years. This provision permitted firms to accelerate delivery of the

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modified test sets by completing the work solicited beyond the base year in 1 option year or by spreading the work over 2 options years. The RFP also provided that in the evaluation of offers "over and above" costs would be taken into account and would be calculated by multiplying an offeror's quoted hourly rate for the base year and each option year proposed by 1,000. The solicitation also contained clauses dealing with the question of how transportation costs would be evaluated for award purposes. The first clause, Federal Acquisition Regulation (FAR) § 52.247-47 (FAC 84-21), provided that offers would be evaluated on an f.o.b. origin basis and that common carrier transportation costs would be added to the firm's offered price for purposes of evaluation. The second clause, FAR § 52.247-56 (FAC 84-42), provided that the lowest appropriate common carrier transportation costs, including an offeror's through transit rates and charges when applicable, would be used in evaluating offers. The third clause, FAR § 52.247-50, provides that the costs of transporting supplies to be delivered under the contract would not be an evaluation factor for award. Finally, the RFP provided that award would be made to the lowest-priced, technically acceptable offeror. The evaluated price was the total cost of the base year, option year, first article, and "over and above" work.

Kollsman submitted its offer based on performing the work in the base year and 1 option year. Ruska proposed performing the work in the base year and 2 option years. The Air Force evaluated offers exclusive of transportation costs. In addition, the Air Force multiplied by 1,000 the hourly rates quoted by each firm for the base year plus each option year proposed, and added that amount to each firm's offer. Ruska's evaluated price was \$21,367,000. Kollsman's evaluated price was \$21,228,670. The Air Force then made award to Kollsman as the lowest priced offeror. This protest followed.

The protester first argues that the Air Force erred in its evaluation of offers in that it failed to take into consideration transportation costs. Specifically, the protester argues that the clauses appearing at FAR §§ 52.247-56 and 52.247-47 required the Air Force to consider transportation costs in its evaluation of offers; according to Ruska, the inclusion of these clauses requires consideration of transportation costs notwithstanding the inclusion in the RFP of the other clause that stated that transportation costs would not be evaluated. In this regard, Ruska argues that the language of the clauses requiring evaluation of transportation costs and transit arrangements are more specific and are controlling over the

more general language of the other clause. In the alternative, Ruska argues that the provisions are ambiguous, that the solicitation should be amended to correct the ambiguity, and that competition should be reopened.

The agency states that it did not evaluate transportation costs because its transportation rate experts advised that the shipping quantities were insufficient to permit use of beneficial transit arrangements under that solicitation provision and, in any event, that evaluation of transportation costs would not affect the results of the competition.

To the extent that Ruska is alleging that the provisions are ambiguous, we think its protest is untimely. The conflict in the solicitation's transportation evaluation provisions was apparent from the solicitation and therefore should have been protested prior to the closing date for receipt of proposals. See 4 C.F.R. § 21.2(a)(1) (1988). Ruska, however, did not protest this apparent conflict until after award. In addition, to the extent that Ruska is now claiming that it relied upon its reading of the solicitation in concluding that the Air Force would evaluate transportation costs, we think that its reliance was misplaced. A party claiming a latent ambiguity must necessarily show that its interpretation of a solicitation, when read as a whole, is at least reasonable. See generally Vitro Servs. Corp., B-233040, Feb. 9, 1989, 89-1 CPD ¶ 136. Here, however, the solicitation contained a provision which in no uncertain terms stated that transportation costs would not be considered in the evaluation of offers. Finally, even if we were to agree with Ruska's interpretation of the RFP, we would not find this a basis to sustain its protest, since Ruska has not shown how it was prejudiced by the Air Force's evaluation of offers exclusive of transportation costs. See Kunkel-Wiese, Inc., B-233133, Jan. 31, 1989, 89-1 CPD ¶ 98. Ruska alleges that, had it been on "clear notice" that transportation costs would not be evaluated, it would have "sought to adjust its bid in some other areas, to remain competitive." However, Ruska provides no support for its position that, assuming it was misled, this affected its basic price. The protester in fact appears to acknowledge the agency position that, even if transportation costs are considered, Kollsman remains the low offeror. Under the circumstances, we deny this basis of Ruska's protest.

Ruska next argues that the agency erred in its evaluation of proposals by improperly calculating the "over and above" costs called for under the RFP. According to the protester, the agency should have multiplied by 1,000 the hourly rate which it quoted for the base year and each option year, which was \$90, thereby arriving at a sum of \$90,000 rather

than the \$270,000 (\$90.00 x 1,000 hours x 3 years) which the agency used to evaluate Ruska's offer. Also, Ruska alleges that it was prejudiced by the agency's method of calculation because it proposed a 3-year, rather than a 2-year, delivery schedule. In short, the protester argues that the agency failed to "level the playing field" for firms offering a 3-year rather than a 2-year delivery schedule, and thus did not evaluate offers on a common basis. The RFP stated:


"For the purpose of evaluating Over and Above Work costs, 1,000 'over and above' hours will be multiplied by the quoted hourly rates for the basic contract and for each option, and the extended amount will be used in evaluation of proposals."

In our opinion, the plain language of the clause indicates that the Air Force intended to multiply each offeror's quoted hourly rate by 1,000 for each year that the offeror proposed and thus, its evaluation of 1,000 hours per year of work proposed was consistent with the stated evaluation clause. While Ruska objects to the failure to evaluate the "over and above" costs for the same number of years for both offerors, even if the agency had based its calculations on a 2-year delivery schedule for Ruska (thereby "leveling" the impact of the clause vis-a-vis Ruska) the firm would still not have been the low offeror. Specifically, the record shows that if the Ruska hourly rate of \$90 was multiplied by 2,000 hours, (the 2-year delivery schedule proposed by Kollsman), Ruska's evaluated cost would only be reduced by \$90,000. Ruska's total evaluated price would therefore be \$21,277,000 which remains higher than Kollsman's evaluated price of \$21,228,670. We therefore deny this basis of protest.

Finally, Ruska argues that the agency improperly concluded that the firm was not the low offeror because it failed to take into account certain benefits inherent in its offer. Specifically, the protester argues that because of its proposed 3-year delivery schedule, the Air Force will receive the benefit of having the use of funds which it would otherwise have to have paid out on the contract under a 2-year delivery schedule (i.e. the "time value" of the

contract money), as well as a number of other benefits resulting from Ruska's extended performance period.1/

Evaluation and award are required to be made in accordance with the terms of the solicitation. See Western Publishing Co., Inc., B-224376, Sept. 2, 1986, 86-2 CPD ¶ 249. In this case, the RFP provided for award to the lowest priced offeror and set forth the method of determining the lowest priced offeror. The RFP did not state that the time value of money or any other "benefit" from awarding on a 3-year delivery schedule, rather than a 2-year schedule, would be evaluated. Thus, we think that the Air Force's evaluation, consistent with the stated evaluation criteria, was proper.2/


James F. Hinchman
General Counsel

1/ The other "benefits" alleged by Ruska include savings as a result of there being no need to store the units for the additional year during which Ruska will have them, savings resulting from the contractor's bearing the risk of loss for an additional year, the extended warranty on one-third of the units and the ability to minimize the risk of obsolescence.

2/ To the extent Ruska is complaining that these other costs should have been included as cost evaluation factors under the RFP, this basis of protest is untimely since it was filed after award. 4 C.F.R. § 21.2(a); Sigma Information Management Corp., B-233155, Feb. 21, 1989, 89-1 CPD ¶ 177.